UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,908	11/18/2003	John Long	LONG=23B	3990

1444 7590 07/20/2006

BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/714,908	LONG ET AL.	
	Examiner	Art Unit	
	Drew E. Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 January 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No. 6,669,546 in view of Allen [Pat. No. 3,389,997].

Allen teaches a device and method for applying shockwaves to confined food comprising a tightly sealed tunnel having metal walls (Figure 1, #10), a diaphragm located above the food (Figure 1, #12), and the endwalls being movable by removing the nuts and bolts to disassemble the device (Figure 1, #15). It would have been obvious to one of ordinary skill in the art to incorporate the features of Allen into AAPA since both are directed to methods and devices for applying shockwaves to food, since

AAPA already included a diaphragm, restricting meat movement, and a chamber (claims 1 and 8-10), since these features were commonly utilized in shockwave treatment devices as shown by Allen, and since the features of Allen would have permitted easier disassembly and maintenance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Long [US 2002/0072318A1].

Long teaches a method for treating food by applying shockwaves to meat through an incompressible fluid (claim 1), a diaphragm with an acoustic impedance about the same as the fluid (claim 1), the diaphragm separating the meat and fluid (claim 1), restricting movement of the meat (claim 1), and the meat being confined and tightly sealed within a chamber (Figure 1, #14). Allen teaches a device and method for applying shockwaves to confined food comprising a tightly sealed tunnel having metal walls (Figure 1, #10), a diaphragm located above the food (Figure 1, #12), and the endwalls being movable by removing the nuts and bolts to disassemble the device (Figure 1, #15). It would have been obvious to one of ordinary skill in the art to incorporate the features of Allen into AAPA since both are directed to methods and devices for applying shockwaves to food,

since AAPA already included a diaphragm, restricting meat movement, and a chamber (claims 1 and 8-10), since these features were commonly utilized in shockwave treatment devices as shown by Allen, and since the features of Allen would have permitted easier disassembly and maintenance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 9-10 recite "a diaphragm". It is not clear whether this is the same "diaphragm" required in parent claims 1 and 8.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1, 4-5, and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art [as disclosed in the preamble of the above Jepson-style claims] in view of Allen [Pat. No. 3,389,997].

Applicant's Admitted Prior Art (AAPA) teaches all of the claim limitations before the phrase "the improvement wherein". MPEP 2129 states: Drafting a claim in Jepson format (i.e., the format described in 37 CFR 1.75(e); see MPEP § 608.01(m)) is taken as an implied admission that the subject mater of the preamble is the prior art work of another. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 534 (CCPA 1982) (holding preamble of Jepson-type claim to be admitted prior art where applicant's specification credited another as the inventor of the subject matter of the preamble). AAPA does not teach a tightly sealed tunnel (claim 1), a metal top, bottom, sidewalls, and endwalls (claim 4), the diaphragm located opposite the top or bottom (claim 4), the diaphragm located above the meat (claims 5, 7-9), and movable metal endwalls (claim 10). Allen teaches a device and method for applying shockwaves to confined food comprising a tightly sealed tunnel having metal walls (Figure 1, #10), a diaphragm located above the food (Figure 1, #12), and the endwalls being movable by removing the nuts and bolts to disassemble the device (Figure 1, #15). It would have been obvious to one of ordinary skill in the art to incorporate the features of Allen into AAPA since both are directed to methods and devices for applying shockwaves to food, since AAPA already included a diaphragm, restricting meat movement, and a chamber (claims 1 and 8-10), since these features were commonly utilized in shockwave treatment devices as shown by Allen, and since the features of Allen would have permitted easier disassembly and maintenance.

10. Claims 2-3, 6, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA, in view of Allen, as applied above, and further in view of Long [US 2002/0072318A1].

AAPA and Allen teach the above mentioned concepts and components. AAPA and Allen do not recite transparent sidewalls (claim 2), the sidewalls made from polyurethane (claim 3), an air gap (claims 11-12), and the air gap being at least 1.9 cm (claim 13). Long teaches a device and method for applying shockwaves to meat by use of polyurethane walls (Figure 1, #140), and air gap (Figure 1, #146), and the air gap being about 2.0 cm (paragraph 0075). It would have been obvious to one of ordinary skill in the art to incorporate the features of Long into the system of AAPA, in view of Allen, since all are directed to methods of applying shockwaves to food, since AAPA already included a diaphragm, restricting meat movement, and a chamber (claims 1 and 8-10), and since the features of Long permitted a negative wave (paragraph 0073).

Response to Arguments

11. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DREW BECKER
PRIMARY EXAMINER

7-18-06